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Lawsuit to sue EPA over Montana water quality rule

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[Lawsuit to sue EPA over Montana water quality rule](#) [Laura Lundquist](#), Chronicle Staff Writer The Bozeman Daily Chronicle

Posted: Tuesday, December 16, 2014 5:51 pm

A local environmental group has indicated it will sue the U.S. Environmental Protection Agency for not reviewing Montana's new water quality rule in a timely manner.

On Tuesday, Guy Alsentzer, executive director of Upper Missouri Waterkeeper Inc., sent a letter to EPA administrator Gina McCarthy giving 60 days notice that he intends to sue the EPA if it doesn't make some sort of ruling on Montana's new water standards.

The Montana Department of Environmental Quality acts as an enforcer of EPA standards but has some discretion on how it carries out its duties.

After seven years of data analysis and public meetings, DEQ finally published new regulations on Aug. 11 that set numeric limits on the nitrogen and phosphorus pollution that towns and industries could discharge into Montana's streams.

By law, the EPA has 60 days to approve new regulations or 90 days to reject them for noncompliance under the Clean Water Act.

Alsentzer pointed out that 126 days have lapsed since DEQ issued the regulations, and it is beginning to issue new discharge permits based on the new limits but without EPA approval.

"It's a procedural safeguard that makes sure that states are doing their part to protect local water quality. So the EPA blowing that deadline presents a risk that Montana waterways aren't being appropriately protected," Alsentzer said.

Nitrogen and phosphorus are nutrients that come mainly from animal and human waste and fertilizers, although they are also byproducts of mining and oil and gas activities.

When too much of these nutrients ends up in lakes and streams, they encourage algae blooms or low oxygen levels in the water, which kill fish and other aquatic organisms.

Previously, DEQ used a descriptive limit to which technicians could later assign different limiting amounts.

The new numeric limits provide consistency.

Montana is one of the first states to apply such limits.

Several people opposed the limits, because a few years ago, the technology needed to bring wastewater down to the limits was expensive. The best technology was reverse osmosis but such equipment might cost the Billings wastewater treatment plant about \$250,000.

Municipal wastewater treatment plants didn't have the money to comply immediately with the limits.

However, when the DEQ had a public comment period this March, some regional engineers indicated that innovative treatment technologies stand a good chance of allowing the variances and criteria to be met by small lagoon operators without onerous expense.

Dave Galt, Montana Petroleum Association executive director, and Tammy Johnson of the Montana Mining Association both expressed concerns about the limits but supported them as long as they could get exemptions.

So DEQ issued a second but connected regulation that allows entities with discharge permits to apply for a variance from the limits.

That's the part that Alsentzer wants the EPA to weigh in on.

"We think the limits are based upon sound science, but what's troublesome is the idea that there's a potential off-road from compliance that could take 20-plus years to come into compliance whereas under the Clean Water Act, five years is the typical compliance term," Alsentzer said. "That raises some red flags."

Alsentzer said because Montana is one of the few states to set numeric limits, the EPA's handling of the regulations could set a precedent for other states that follow.

But they may have to take more time because they haven't ruled on many nutrient limits.

Alsentzer said EPA administrators may reach their conclusion before the 60-day period is up, avoiding the need for a lawsuit.

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